

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FOCUS PRODUCTS INTERNATIONAL, LLC, ET AL.,

Plaintiffs,

-v-

KARTRI SALES COMPANY, INC., and MARQUIS
MILLS INTERNATIONAL, INC.,

Defendants.

15 Civ. 10154 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court has reviewed defendants' pending motions *in limine* and will schedule a conference shortly at which it will put its rulings on these motions on the record. However, because the Court's resolution of the motion at Dkt. 340 carries with it a modest potential reopening of discovery, the Court notifies counsel now of that ruling.

In that motion, defendants sought to exclude six of plaintiffs' fact witnesses as, ostensibly, undisclosed by plaintiffs during discovery: Robert Burbank, Stacy Dubinski, Ryan Erickson, Charles Kuehne, Jeffrey Werner, and Adrian Whipple. Dkt. 340 at 6. The Court denies the motion to exclude.

As to Kuehne, the motion is baseless, as he was identified in plaintiffs' response to Interrogatory 5. *See* Dkt. 374-1 at 4.


As to the other five witnesses, each is being offered as a successor to an earlier-identified witness who has since left plaintiffs' company ("Focus"). The Court will permit plaintiffs to call these five witnesses, given their status as successors to duly noticed witnesses, but amends the case management plan to give defendants the opportunity to depose them. The Court notes that plaintiffs had disclosed the identity of the five witnesses' predecessors at Focus, *id.* at 3–4, but

that defendants elected not to depose them. Nonetheless, in the interest of assuring defendants a fair trial, the Court will grant defendants the opportunity to depose these witnesses.

In the event defendants intend to depose any of the five witnesses, they are to notify plaintiffs' counsel of this, in writing, by **Monday, October 18, 2021**. Depositions of any of the five witnesses must be completed by **Friday, November 5, 2021**; the Court expects Focus to assure that any such deponents are reasonably available to be deposed during this period.

The current trial date, **December 13, 2021**, remains in place. Counsel are notified, however, that, as of today, multiple trials assigned a higher priority than this remain scheduled for that date.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: October 12, 2021
New York, New York